

PARISH Clowne

APPLICATION Removal of condition 3 of application 15/00216/OUT (There shall be no commencement of development on the housing element of the proposals including site works until the building shell of phase 1a of the hotel development as shown on the concept plans).

LOCATION Hotel Van Dyk and Land South Of Plantation on North Side of Worksop Road Clowne

APPLICANT Mr Peter Eyre & Van Dyk Country House Hotel Ltd

APPLICATION NO. 17/00566/VAR

CASE OFFICER Chris Fridlington

DATE RECEIVED 3 November 2017

BACKGROUND

In June 2016, outline planning permission was granted by the Council for an extension to the Grade II listed Van Dyk Hotel on Worksop Road to the east of Clowne. The same consent granted outline planning permission for residential development of 52 houses on land on the north side of Worksop Road opposite the existing hotel (15/00216/OUT). At the time of the decision, it was acknowledged that the proposed houses were contrary to saved policies in the Bolsover District Plan because of the location of the application of the application site in countryside outside of the settlement framework.

However, the housing was also considered to be enabling development that would help to fund the proposed extension to the hotel and the desirability of enabling the existing hotel business to expand weighed heavily in favour of granting planning permission for the housing. In particular, significant weight was attached to the economic benefits of the hotel development both to support and grow local business (including the hotel business itself), and to develop the tourism potential of the area by providing a high quality overnight destination.

Consequently, Condition 3 on the original outline planning permission and an obligation in the associated legal agreement placed restrictions on the phasing of the proposed development that required a new roundabout (providing a new access to both the housing site and the hotel) and the shell of the hotel extension to be completed before any works commenced on the consented housing scheme. At the time the decision was made, it was considered preventing the housing coming forward before the delivery of the hotel extension would be the best way to ensure that granting permission for the enabling development on a very exceptional basis would secure the economic benefits that could be achieved for the District by granting permission for both proposals.

In summary, the current application proposes replacing this condition and the existing planning obligations with a fresh s.106 legal agreement, which is intended to secure the delivery of the roundabout and the hotel extension but allow the housing to be commenced at the same time as the extension to the hotel. Information submitted with the application indicates that the extended hotel would be operational by December 2018 by which time it is

anticipated around four houses will have been completed on the opposite side of Worksop Road if permission were to be granted for the current application.

CURRENT PROPOSAL

The current application has been made under s.73 of the Town and Country Planning Act 1990 ('the 1990 Act'), as amended, and proposes the deletion of Condition 3 attached to Planning Decision Notice 15/00216/OUT.

Condition 3 attached to Planning Decision Notice 15/00216/OUT currently says:

There shall be no commencement of development on the housing element of the proposal including site works until the building shell of phase 1a of the hotel development as shown on the concept plans (Chris Carr reference 14/098 drawing nos. SK1B, SK2B & SK3B) submitted with the application, including external walls doors windows and roof, is complete together with the new roundabout providing access to both elements of the development.

The decision notice says this condition was imposed: *to ensure the hotel extension is commenced prior to the enabling residential development to ensure that the economic benefits from the hotel development are realised and in accordance with the principles of the National Planning Policy Framework which support growth and economic development.*

The applicant is also seeking to replace the existing s.106 legal agreement, which contains a planning obligation that says the housing will not commence until the shell of the hotel extension has been 'practically completed'. Therefore, a draft s.106 legal agreement accompanies the application and includes the following obligations:

No Commencement of Development of the Residential Property shall take place until:

- i. the Section 278 Agreement has been completed;*
- ii. a contract to carry out the Highway Works has been signed and dated;*
- iii. a contract to carry out the Hotel Extension Works has been signed and dated;
and*
- iv. the Owner has given at least 10 days written notice to the Council of the intended Commencement Date.*

A planning statement submitted with the application states that replacing Condition 3 with these planning obligations is required because a change in the proposed method of construction of the hotel extension means that funding from the sale of the land to the house builder is needed at an earlier stage of its construction. However, the house builder will not proceed with the purchase of the land until Condition 3 has been discharged or until it is deleted. In essence, the house builder does not want to go ahead with the purchase until they no longer have to rely on the actions of a 'third party' on land outside of their control before they can start on the proposed housing development.

In addition to these viability issues, the applicant also considers there are elements of the joint works that must be undertaken early in the process and cannot wait until completion of the hotel 'shell'. However, officers consider these works, which include the proposed roundabout giving access to both sites, could be carried out without releasing the condition or by way of a non-material minor amendment if the works went beyond the provision of services by any of the statutory undertakers.

Therefore, the key issues in the determination of this application are considered to be whether the proposed legal agreement would provide sufficient certainty that both the proposed roundabout and the hotel extension would be delivered within an appropriate timeframe compared to the simultaneous build out of the consented housing scheme now being proposed.

HISTORY

The planning history for the site is relatively long and complex but the most relevant applications to the current application are the following consents:

15/00216/OUT : Outline planning permission for hotel extension and erection of 52 residential properties granted June 2016

16/00623/REM: Reserved matters for the appearance of 52 dwellings approved September 2017

17/00310/REM : Reserved Matters (Appearance and Landscaping) for Hotel Extension (Phase 1A) approved August 2017

CONSULTATIONS

County Council – No response to date.

Parish Council – No response to date.

PUBLICITY

The application has been advertised by a site notice but no representations have been received to date.

ASSESSMENT

The current application has been made under s.73 of the 1990 Act, which applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. In particular, the

current application proposes the deletion of Condition 3 attached to Planning Decision Notice 15/00216/OUT, which requires the shell of the approved hotel extension and the new roundabout (providing a new access to both the hotel and housing site) to be completed prior to commencement of the approved housing development.

Section 73(2) of the 1990 Act says on such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted. Therefore, it should be noted that the consideration of this application does not involve re-assessing the acceptability of the proposed hotel extension, revisiting the principle of granting planning permission for the proposed housing scheme as enabling development, or require full consideration of all the issues raised in the determination of the original application.

What is actually required under s.73(2) of the 1990 Act is a more focussed assessment of whether Condition 3 should be varied or deleted (as requested by the applicant) with reference to the reason for its imposition as stated on the decision notice and with regard to relevant planning policies and other material considerations including the revised planning obligations offered in the draft legal agreement submitted by the applicant.

S.73(2) of the 1990 Act goes on to say this assessment should result in one of two outcomes:

- a) if the Council decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted – as proposed - then the Council should grant planning permission accordingly, but
- b) if the Council decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, the Council should refuse the application.

Reasons for Condition 3

As noted immediately above, the starting point in the determination of this application is an assessment of the planning purpose behind Condition 3 and the reasons it was imposed at the time of the original decision. As stated on Planning Decision Notice 15/00216/OUT, the reasons for the imposition of Condition 3 was: *to ensure the hotel extension is commenced prior to the enabling residential development to ensure that the economic benefits from the hotel development are realised and in accordance with the principles of the National Planning Policy Framework which support growth and economic development.*

From this wording, it is reasonable to consider Condition 3 continues to serve a proper planning purpose by seeking to ensure the economic benefits resulting from the extension to the existing hotel would be realised by granting planning permission for the housing. It is also reasonable to consider that the delivery of the housing but not the extended hotel would be an undesirable outcome that would conflict with saved policies in the Bolsover District Local Plan and undermine the reasons for approving the housing as an exception to these policies not least because it was 'enabling development'.

Furthermore, the delivery of the hotel extension would continue to accord with policies in the National Planning Policy Framework that support sustainable economic growth in rural areas. Provision of the roundabout would otherwise facilitate the safe and efficient operation of the extended hotel and as such, its completion is equally consistent with the objectives of achieving sustainable economic growth. Therefore, there are good reasons to ensure that the proposed development proceeds in a certain sequence and in particular, good planning reasons to ensure that the roundabout is provided before either the extended hotel or the proposed housing is taken into use.

Consequently, it would be difficult to support the deletion of Condition 3 attached to Planning Decision Notice 15/00216/OUT if the proposed obligations would not offer similar controls on the phasing of the development. In the first instance, it is considered a variation to Condition 3 rather than its deletion may find a better balance between the applicant's desire to relax this condition and the need to secure the provision of the proposed roundabout to make the proposed development acceptable in planning terms.

Provision of the Roundabout

As noted above, the roundabout is required to provide both sites on either side of Worksop Road with a safe and suitable access. Condition 3 partly addresses this issue by requiring the provision of the roundabout before a start is made on the housing proposals. In comparison, the obligation proposed by the applicant to address this issue prevents commencement of the housing development until (i) a Section 278 Agreement has been completed; and (ii) a contract to carry out the Highway Works has been signed and dated.

The completed s.278 agreement will be a legally binding document between Derbyshire County Council and the developers to ensure that the roundabout would be completed to the standards and satisfaction of the County Council in their capacity as the Local Highway Authority. The completed s.278 agreement would also contain a bond that should allow the County Council to pay for the roundabout to be completed if it were not to be completed by the developer(s). However, a completed s.278 agreement would not in itself guarantee the completion of the roundabout and the District Council would not have any power to enforce against any breach of the s.278 agreement.

Consequently, it is considered the proposed obligation does not go far enough to secure delivery of the roundabout. However, it is acknowledged that it is not entirely necessary in planning terms to require the roundabout to be completed prior to any works starting on either site. Therefore, rather than delete Condition 3 in its entirety, it would be more appropriate to vary its existing terms and require the roundabout to be completed prior to the hotel being taken into use and/or prior to the first occupation of any of the approved houses if permission were to be granted for this application.

In this case, there are no obvious reasons why the existing access points to either site would not allow safe access to the sites during the construction phase of either development. Therefore, the change in the timing of the provision of the roundabout should be acceptable in highway safety terms. This variation to the condition would also appear to be acceptable to both developers and reasonable in planning terms in all other respects because it is stated

very clearly in the submitted application that both developers require the roundabout to be completed prior to 'starting works' on site in any event.

However, as set out on several occasions in earlier sections of this report, the varied condition would be necessary in planning terms to ensure both developments would be provided with a safe and suitable access in accordance with the requirements of national planning policies and saved Local Plan policy GEN2. In addition, acceptance of the proposed obligations in respect of the s.278 agreement would give the Council certainty that the development is sufficiently viable to pay for the proposed roundabout before any work begins on the housing development

Consequently, officers consider that a varied condition and acceptance of the obligations proposed by the applicant in respect of the roundabout would be acceptable in planning terms.

Delivery of the Extension to the Hotel

In principle, the part of Condition 3 relating to delivery of the hotel extension could also be varied in a similar manner to that proposed for the delivery of the roundabout. However, this would not necessarily work for the applicant because the house builder does not want to go ahead with the purchase until they no longer have to rely on the actions of a 'third party' on land outside of their control before they can start on the proposed housing. Therefore, because a variation to the timing of the delivery of the hotel extension prior to 'first occupation' is not sufficient to allow the sale of the housing land to go ahead; it would not achieve the applicant's objectives to open the extended hotel by the end of 2018.

As set out in earlier sections of this report, the current proposals have come forward because of the changed methods of construction now proposed by the applicant, which will mean the extension will be more expensive to build than originally anticipated. However, the revised approach to building the hotel is intended to 'fast track' completion of the hotel extension and it would be ready to open as soon as it was substantially completed - the applicant is intending to open the extended hotel in December 2018. To be able to do this, the applicant requires the release of the funds from the sale of the land for the housing proposals.

To facilitate the sale of the land to the house builder, the applicant proposes replacing Condition 3 with a s.106 legal agreement that would include a planning obligation that says, amongst other things: *No Commencement of Development of the Residential Property shall take place until a contract to carry out the Hotel Extension Works has been signed and dated.*

This obligation would prevent a start on the housing until a contract for the hotel works are signed and this contract will only be signed after 'due diligence' and amongst other things, only when the developer can provide proof of funds to cover the cost of the works. This means that the signed contract for the hotel works should secure the delivery of the extension other than in the event of an unexpected change to the current circumstances of the interested parties such as a sudden change in the financial standing of one of the signatories to the contract, for example.

The effect of the Council accepting this obligation and releasing the restriction condition 3 would be to allow both proposed developments to come forward at the same time. By allowing this to happen, the extended hotel could be operational by December 2018 and therefore the economic benefits associated with the extended hotel would be realised much sooner than was first expected also taking into account the applicant has reserved matters approval for the hotel extension. In addition, there would be some benefits to local residents and the extended hotel because there would be less noise and disturbance and potentially less traffic movements if the construction phase for the housing started at the same time as the hotel extension rather than after completion of the shell of the new building.

However, the benefits of releasing Condition 3 and accepting the proposed obligation have to be balanced against the fact the proposed obligation does not fully guarantee the delivery of the hotel extension. In these respects, there is the risk that releasing control over the phasing of the development would undermine public confidence in the Council's decision making if the housing was delivered but not the hotel extension. This risk is closely related to the prospect of being left with a housing development that would be an exception to current policy with very little supporting justification and the risk that the objectives of granting outline planning permission for the housing would not have been achieved if only the housing was built out.

Notwithstanding these points, it also has to be acknowledged that the requirements of Condition 3 and the provisions of the associated legal agreement when taken together only 'guarantee' the provision of a shell of a building not an operational hotel prior to commencement of the housing development.

In these respects, whilst it may be unlikely that a developer would build out the shell of the building if it wasn't intended to bring it into use, providing the shell of a building does not in itself guarantee that it would be put into its intended use or when it might be brought into use. In this case, the terms of the existing condition do not prevent the housing being built if the shell of the hotel extension is not brought into use. In contrast, the signed contract that would be required to discharge the proposed obligation would provide a realistic likelihood that the extended hotel would be operational before more than ten houses had been completed on the adjacent site.

Key Issues

Therefore, this application provides the Council with a choice of how much control it should seek to retain over the sequencing of the proposed development to achieve the best planning outcomes for the District. On one hand, it could see the benefits of granting planning permission for the extended hotel being realised more quickly than anticipated but at the risk of losing control over the commencement of the housing development if it were to relax the requirements of the existing condition. On the other, it could retain control over the housing development until the shell of the hotel extension is completed by retaining the existing condition at the risk of unnecessarily delaying both developments and with no guarantee the extended hotel will be operational before work starts on the housing scheme.

Technical Appraisal

In determining how much control to retain over the sequencing of the proposed developments, the Council must pay due regard to policies in the National Planning Policy Framework, which say pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. This includes careful consideration of how planning conditions and other obligations would impact on the delivery of development proposals.

This is an important consideration because the current application has come forward in relation to viability considerations and a decision to refuse this application would not be fully in accordance with national planning policies unless the Council could demonstrate how the requirements of Condition 3 and completion of the hotel shell prior to the commencement of the housing development continues to be reasonably necessary. To make a determination on this fundamental point, it is necessary to look at the supporting guidance in National Planning Practice Guidance and take a balanced view on whether Condition 3 remains the best way to ensure the economic benefits associated with the extended hotel will be realised.

Notably, National Planning Practice Guidance says that it is important that the local planning authority and the applicant discuss and seek to agree phasing conditions before planning permission is granted. This is in order to understand how the requirements would fit into the planned sequence for developing the site, impacts on viability, and whether the tests of reasonableness and necessity will be met. Planning Practice Guidance goes on to say phasing conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness and conditions requiring a development to be carried out in its entirety will fail the test of necessity.

In this case, the applicant's plans for delivering the hotel extension have changed since the original decision was made so it is reasonable to look again at whether the sequencing of the development imposed by Condition 3 remains appropriate. In light of the changed circumstances and very much on balance, officers consider the above guidance in Planning Practice Guidance means the restrictions placed on the sequencing of the proposed development imposed by Condition 3 now fail the tests of reasonableness and necessity by requiring the 'practical completion' of the hotel extension prior to the commencement of the housing scheme.

Primarily, this is because it is considered that the proposed obligation would secure the delivery of the hotel extension with a sufficient degree of certainty to allow the release of the condition whilst the retention of the existing condition would otherwise fail to promote or encourage the delivery of either development. It is also considered the release of the condition would not only take into account the revised viability considerations that underpin the submission of the current application but would also be in line with the original purpose of the existing condition. This is because the signed contract needed to allow a start on the housing would be highly likely to deliver an extended hotel that would be fully operational within a reasonable timeframe compared to the build out of the proposed housing also taking into account the applicant has already secured reserved matters approval for the hotel extension.

Therefore, the proposed obligation is considered to be a better mechanism to ensure the economic benefits of the hotel extension are realised compared to the restrictive provisions of Condition 3, which could be considered to place an unduly onerous burden on both developers in light of the current viability considerations and in respect of the timely delivery of both schemes. Consequently, officers are able to recommend the part of condition 3 that prevents any site works and the housing development being started prior to completion of the shell of the housing extension may be deleted subject to prior entry into a legal agreement containing the planning obligations proposed by the applicant.

Conclusions

In conclusion, it is recommended that Condition 3 is varied to require the delivery of the proposed roundabout prior to any part of either development being taken into use but the restriction on the housing development starting prior to the commencement of the housing development should be deleted for the reasons set out in the above report. However, this recommendation is finally balanced and subject to prior entry into a s.106 legal agreement containing the planning obligations proposed by the applicant which says:

No Commencement of Development of the Residential Property shall take place until:

- i. the Section 278 Agreement has been completed;*
- ii. a contract to carry out the Highway Works has been signed and dated;*
- iii. a contract to carry out the Hotel Extension Works has been signed and dated;
and*
- iv. the Owner has given at least 10 days written notice to the Council of the intended Commencement Date.*

It is considered these obligations would be necessary to make the development acceptable in planning terms because they are required to give the Council sufficient certainty the roundabout and the hotel extension would be delivered if Condition 3 was varied as proposed.

In these respects, the obligations are also directly related to the development and fairly and reasonably related in scale and kind to the development because the roundabout is required to provide safe and suitable access to both developments and the housing element of the proposals would be unlikely to be acceptable if it was not enabling development that facilitated the expansion of the existing hotel. Therefore, they would meet the legal tests and policy tests for planning obligation set out in *the Community Infrastructure Levy Regulations 2010*, as amended and the National Planning Policy Framework.

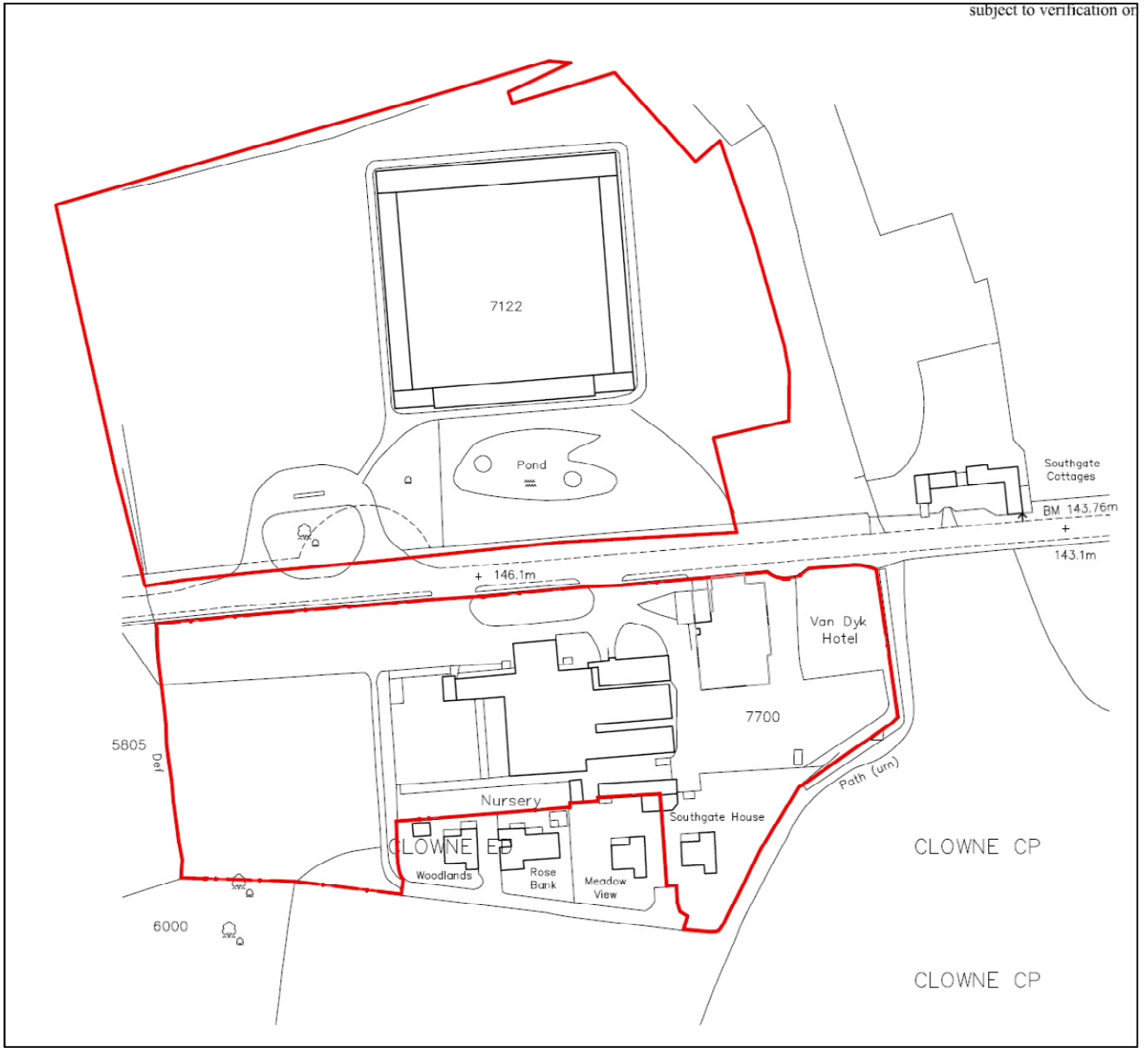
RECOMMENDATION

Accordingly, the current application is recommended for APPROVAL subject to prior entry into a s.106 legal agreement as discussed in the above report, the subsisting conditions attached to the original outline planning permission (as recommended by Planning Practice

Guidance), and the following variation of Condition 3 attached to 15/00216/OUT:

- The hotel extension hereby permitted shall not be taken into use and/or prior to the first occupation of any of the houses either permitted, the roundabout subject of Condition 5 attached to 15/00216/OUT shall be completed and fully available for its intended use to provide access to both the housing site and the hotel.

Site Location Plan



Housing Layout (reserved matters approved under 16/00623/REM)



Hotel Proposals (reserved matters approved under 17/00310/REM)

